A

IN RE INQUEST INTO THE DEATH OF SUJATHA KRISHNAN, DECEASED

CORONER'S COURT, KUALA LUMPUR
MOHD FAIZI CHE ABU; CORONER
B [SDR NO: 88-57-08]
29 SEPTEMBER 2009

CRIMINAL LAW: *Coroner's court - Inquiry into death - Circumstances of death - Whether deceased committed suicide - Whether any party criminally involved in cause of death - Criminal Procedure Code, ss. 329, 337*

C

This was an inquest into the death of one Sujatha Krishnan ('deceased') before the coroner's court under s. 337 of the Criminal Procedure Code. The body of the deceased was released
D without a post mortem being conducted at the request of family members and the funeral was carried out the very next day. The issues were: (1) whether the decision made by one Dr Saktivelloo to send the deceased to the Tengku Rahimah's Hospital in Klang ('Klang GH') instead of the Kuala Lumpur General Hospital
E ('KLGH') was reasonable; (2) whether the deceased's death was caused by paraquat ingestion; (3) whether the deceased committed suicide; and (4) whether any party was criminally involved in the cause of her death.

F **Held (death by paraquat ingestion in the course of committing suicide):**

(1) The decision made by Dr Saktivelloo to bring the deceased to Klang GH instead of KLGH was reasonable on the given
G reasons. Further, expert evidence showed that the deceased received treatment at Klang GH just as expected to be given by KLGH. It followed that the call by Dr Saktivelloo could not be faulted as he had balanced all the possibilities and concluded that it was in the best interest of the deceased to
H be brought to Klang GH. (paras 16, 17 & 18)

(2) The missing urine samples were the most disturbing evidence in the inquest. The doctors testified that such missing samples were a normal issue in Klang GH. Such excuse was unreasonable especially in medico-legal cases. As there was no
I medical certainty as to whether the deceased had taken the paraquat, resort should be had to the circumstantial evidence and oral testimony of the witnesses. (para 19)

(3) The symptoms shown on the deceased was one of paraquat ingestion such as ulcer and throat burn. There were testimonies from relatives of the deceased and attending doctors that she had confessed to consuming the paraquat knowingly. The medical treatment given to her was also identical to that of paraquat cases. (paras 21, 22, 23 & 24)

(4) The position of the injury inflicted on the lower part of the deceased's mouth suggested that she had taken the corrosive substance in the position standing up. There were no other injuries on her body except for the one that was consistent with paraquat ingestion. There was also no evidence of physical force on the deceased. In addition, she had taken the paraquat voluntarily since there was no splash of the liquid on her face. There were also no marks around her neck to suggest that someone had forced her to drink the paraquat. Further, the evidence showed that the paraquat was consumed from the bottle itself and since it was sealed the deceased must have known that it was paraquat. (para 26)

(5) The VCD that recorded the funeral of the deceased did not suggest how she had died. Neither was there evidence to implicate anybody. The presence of Mr. Vell Paari at the funeral as seen in the VCD was understandable since the deceased was his personal assistant. Mr. Manikavasagam's view in respect of Mr. Vell Paari's reaction was irrelevant and purely a personal observation. The other VCD that Mr. Manikavasagam testified he would release after the inquest should be tendered herein, if relevant. (para 27)

(6) The allegation by Mr. Manikavasagam that the father of the deceased had telephoned him and asked him to take up the matter in court was in direct contradiction of the father's evidence herein. The evidence of the father was credible as he would not have spoken an untruth in respect of his daughter's death. As Mr. Manikavasagam could not identify the mysterious caller who had asked for help to find the truth into the circumstances of the deceased's death, such evidence must be disregarded for lack of proof. (paras 27 & 28)

(7) The poison pen letter introduced to show that someone was involved in the deceased's death was not credible evidence. (para 29)

(8) The diary of the deceased showed that she had a happy life and was in love. The man she was in love with could not be identified but there was the evidence of the photo of Mr. Vell Paari next to her bed. The evidence during the proceedings also showed the close relationship between Mr. Vell Paari and the deceased. He could be the person the deceased was in love with but the court was reluctant to decide on that issue since it had no bearing herein. It matters not who the love of her life was as she had committed suicide for reasons best known to her. This court was not to pass judgment on anyone's morality. (paras 30 & 31)

[The deceased died on 25 June 2007 at 10.25am at Ward 7A at Klang GH. Her cause of death was paraquat ingestion and she died in the manner in which she had committed suicide. The involvement of anybody in her death was ruled out.]

Case(s) referred to:

Asean Security Paper Mills Sdn Bhd v. Mitsui Sumitomo Insurance (Malaysia) Bhd [2008] 6 CLJ 1 FC ***(refd)***

In Re Anthony Chang Kim Fook, Deceased [2007] 2 CLJ 362 HC ***(refd)***

PP v. Shanmugam [2002] 6 MLJ 562 ***(refd)***

R v. Huntbash; ex parte Lockley [1944] KB 606 ***(refd)***

Legislation referred to:

Criminal Procedure Code, ss. 329, 337

Reported by Usha Thiagarajah

VERDICT

Mohd Faizi Che Abu; Coroner:

Background Of The Proceedings

[1] A sudden death report was referred to me and under s. 329 of the Criminal Procedure Code, the Public Prosecutor requested me to sit as a Coroner to conduct the inquest as to determine the questions under s. 337 of the same Code.

[2] Hearing Dates (15 days)

1. 16, 17 and 18 of March 2009 (3 days)
2. 21 and 22 of April 2009 (2 days)
3. 4, 5, 6 and 7 of April 2009 (4 days)
4. 20, 21, 22 and 23 of June 2009 (4 days)
5. 9 and 10 of July 2009 (2 days)

Numbers of deponents: 24 deponents

Representatives for interested party/watching brief

Deputy Public Prosecutor(s): Mr Charles Anslem together with Mr Geetham Ram

For family of the deceased : Dato' K. Kumaraendran

For Mr Vell Paari : Dato' C Vijayakumar a/l Chornalingam together with Dato' K. Kumaraendran

For Doctor Saktiveloo : Dato' Satharuban a/l Sivasubramaniam

For ACP Kumaran : Mr Selvam

For Mr Manikavasagam : N. Surendren together with Mr. Manoharan

[3] Application Of Interested Party

a. Right to examine the witnesses

Counsel for En Manikavasagam (deponent 22), Mr M. Surendran and Mr Manoharan, argued extensively on the 2nd day of the inquest that he should be given the right to examine the witnesses. When queried by me on what basis that he should be so allowed, the answer given was that he had lodged a police report in respect of this case based on two poison letters. On the same day, I ruled that Mr Manikavasagam was not entitled to examine the witnesses on the following grounds:

A i. he was not an interested party to the inquest; by lodging a police report alone did not make him an interested party automatically.

ii. His question, if any, can be forwarded to the learned
B Deputy Public Prosecutor for questioning.

Let me now discuss my terms of reference as a coroner in this case.

[4] Case Law And Principle Relating To The Inquest Duty
C Of The Coroner

Criminal Procedure Code

337. Inquiries to be made by Magistrate

D A Magistrate holding an inquiry shall inquire when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of the death.

[5] In simple words, my terms of reference were to determine
E the following issues pursuant to s. 337 of the Criminal Procedure Code. They were:

1. When did the deceased die?

F 2. Where did the deceased die?

3. How did the deceased die?

4. In what manner did the deceased die?

G 5. Whether any person was criminally concerned with the death?

[6] In the case of *In Re Anthony Chang Kim Fook, Deceased* [2007] 2 CLJ 362, the High Court judge in revising the finding of the coroner reminded that a coroner should not make comments
H or observations which were not under the purview of the coroner's court. His Lordship reminded and I quote:

It must be borne in mind that in an inquest, there are no parties, there is no indictment, there is no prosecution, there is no defence and there is no trial. It is simply an attempt to establish facts. It
I is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the

judge holding the balance or the ring, whichever metaphor one chooses to use, see *R v. South London Coroner; ex parte Thompson* [1982] 126 SJ 625 DC.

[7] It is important for me to say that the law is silent on the standard of proof to which a Coroner is to apply his mind when dealing with the evidence presented before him. For example, when there are two conflicting evidence on oath, the question of who should the coroner believe and what test is to be applied is not discussed in the decided cases. But in the case of *Public Prosecutor v. Shanmugam* [2002] 6 MLJ 562, Suriyadi J (as he then was) said and I quote:

> To reiterate, when conducting an inquiry a magistrate must confine himself to the evidence and arrive at a specific verdict based only on the established facts pursuant to section 337 of the Criminal Procedure Code. Probabilities and guesswork can never be the basis for that specific verdict. *If the evidence does not reach the required standard, to enable the learned magistrate to reach a verdict of misadventure, or death caused by natural causes or act of God, then an open verdict would be the last resort. The latter verdict must not be adverted to if the uncertainties are very minor, but the availability of evidence is there to show how the deceased person came by his death.*

[8] In another English case of *R v. Huntbash; ex parte Lockley* [1944] KB 606, Viscount Caldecote CJ adds:

> ... It is not probability however which determines verdicts, but proved facts, and, if facts which justify a specific verdict are not proved at an inquest, there is no alternative but to return an open verdict.

Standard Of Proof In The Inquest

[9] The law in Malaysia is still young when it comes to the inquest. As far as the standard of proof in an inquest is concerned, I am of the view that the test is on the balance of probabilities sliding to the beyond reasonable doubt. The following are my reasons.

[10] This is not a criminal trial, but an inquiry to make a finding of fact. To do that, the evidence adduced must be credible as to become the basis for the coroner's finding. No one is on trial. Therefore, hearsay and secondary evidence is allowed but hearsay

A evidence must be scrutinized with caution. As the finding of the inquiry is legally binding, the facts must be proven beyond reasonable doubt.

[11] Guided with the law and terms of reference as a Coroner,
B these were my answers to the five questions under s. 337 of the Criminal Procedure Code.

Evidence Disclosed During Inquest

[12] The details of the testimony of every deponent can be seen
C in the 121 pages of the notes of the proceedings but for the purpose of this verdict, I shall summarily state the gist of the evidence disclosed before me.

[13] On the fateful day of 21 June 2007, Sujatha had called her
D brother Surendran (D12) and Vell Paari (D4) for help. She complained that she had unknowingly taken paraquat. She was then rushed to the hospital in Klang for treatment. She had her fighting chance for almost five days but her body could not sustain the damage caused by the allegedly corrosive substance known as
E paraquat. She died on 25 June 2007 at about 10.25am. Her body was then released without a post mortem being conducted. This was at the request of the family members. Her funeral was carried out the very next day.

F **[14]** There are many theories that can be easily speculated out of her death but my role is to decide on the evidence and nothing else. At this point, I would like to quote an interesting observation made by the current Chief Justice of the Federal Court, YAA Tun Zaki bin Tun Azmi in the case of *Asean Security Paper Mills Sdn Bhd V. Mitsui Sumitomo Insurance (Malaysia) Bhd* [2008] 6 CLJ 1
G where His Lordship had said:

> Judges are mere mortals. They do not have ability to determine what had truly and actually taken place except to base their decision on legally admissible evidence adduced before them by the
H parties. The judge must arrive at a conclusion to the best of his ability. A judge who cannot make or delays his decision is not a good judge.

[15] Armed with these principles and law, I now turn to the five questions that I am under a duty to decide:
I

When Did The Deceased Die?

It is clear from the testimony of the deponents in this proceeding that the deceased died on 25 June 2007 at 10.25am. This can be seen from the evidence of the doctor who had treated her and is corroborated with the evidence of the relatives of the deceased as well as medical notes from Ward 7A. There is no dispute to this fact.

Where Did The Deceased Die?

It is beyond the shadow of doubt that she died at Ward 7A, Hospital Tengku Ampuan Rahimah, Klang as the evidence in this inquest is not disputed.

How Did The Deceased Die?

Was she murdered or otherwise? This is the question everyone is asking. This is due to several issues and I would like to discuss those issues first before I state my views and my findings. The issues are:

a. choice of hospital; and

b. missing samples/no post mortem report.

Choice Of Hospital

[16] It was questioned in this inquest that the hospital of which the deceased should have been brought to was the Kuala Lumpur General Hospital because it has the best emergency trauma infrastructure in the country and is closer to the deceased's house. The decision to bring the deceased to Kelang General Hospital was made by Deponent 5 (Dr Saktiveloo). He gave his reasons as follows:

i. He knows the hospital very well compared to Kuala Lumpur General Hospital. This is because he was working at the Kelang General Hospital (HTAR).

ii. He was able to monitor the treatment.

iii. The traffic condition on that day would not make any difference as to the distance.

A iv. He managed to cut the waiting time for the treatment as he had called the medical officer to wait for him at the Emergency Department with all the medicine.

[17] He admitted that this is his judgment call as a doctor. I have B to decide whether this was in fact meant to save the deceased and whether it was a decision that is reasonable.

[18] In my opinion, that decision was reasonable given the facts in this case. I am of the view that the deceased received C treatment that was expected to be given to her in the event she was brought to the Kuala Lumpur General Hospital. This was supported by the expert evidence of Deponent 21 (Prof Madya Sharum bin Abdul Wahid). I cannot fault the call by the doctor as he, at that particular moment, had balanced all the possibilities D and came to the conclusion that it is in the best interest of the patient that she be brought to the Kelang General Hospital.

Missing Samples/No Post Mortem Report

[19] This is indeed the most disturbing evidence in this inquest. E The urine samples of the deceased were missing. The doctors testified that this was normal in Kelang Hospital; but in my view it was not a reasonable excuse especially in medico-legal cases such as this case. Having said that, I must decide the consequence of the missing samples in this inquest. I come to a F conclusion that the only implication is, it had deprived me of obtaining medical certainty as to whether the deceased had taken paraquat. I am now left with the circumstantial evidence and oral testimony of the witnesses.

G **[20]** It is equally comforting to know that after this case, the Kelang General Hospital had cleared any misunderstanding in respect of medico legal cases. The position is now that a post mortem is mandatory once the police have requested it to be done. This is regardless of whether the patient was diagnosed in H the same hospital or that the cause of death is known or that the family members had refused the post mortem. In this case, the reason why the post mortem was not carried out was due to the fact that it was refused by the family members and the cause of death was known. Again, this lack of understanding of the correct I procedure has deprived me from knowing the cause of death of the deceased from a medical point of view.

I now move to the next question, what is the cause of her death? Let me now narrate the circumstantial evidence surrounding her death.

Paraquat Symptoms

[21] From the evidence disclosed during the hearing, I was satisfied that the symptom shown was one of paraquat ingestion cases such as ulcer and throat burn.

Oral Testimonies

[22] The brother of the deceased (Surenthiren) testified that he had bought the paraquat at the request of his sister. He put the bottle in the kitchen cabinet to remind her so that she can pass the bottle to her friend. Mr Vell Paari and Dr Saktiveloo testified that there were greenish stains on the body of Sujatha and a strong smell of paraquat at the house. They also saw the bottle with the word "paraquat" in her room. All of them spoke to Sujatha and she mentioned to them that she had consumed it unknowingly. There were also testimonies from the doctors who attended to her during the emergency department that the greenish stains were seen on her body. All these facts pointed to one conclusion that they had seen the paraquat residue on her body and smelt its odour. In my considered view, the family members and the doctor who are professionals and independent witnesses could not have agreed on something that was fictitious or untrue.

Medical Treatments

[23] The treatment given to the patient is also identical to paraquat cases such as the Fullest Earth and Charcoal to name a few. All medical officers who attended to her were in agreement to this.

[24] These are the evidence adduced before me.

Cause Of Death

[25] It must follow from my above reasoning and finding that, even though no post mortem was conducted and despite the missing samples, the cause of Sujatha's death is paraquat ingestion. The circumstantial evidence and testimonies are so overwhelming for me to rule otherwise.

A *In What Manner Did The Deceased Die?*

To answer this question, the evidence of the expert has been of great assistance to me.

B **[26]** After hearing all the evidence, I am of the view that the deceased had committed suicide on the following grounds:

1. The position of the injury inflicted on the lower part of the mouth.

C As elaborated by the expert, this particular injury suggested that the deceased had taken the corrosive substance in the position where her body was standing straight up.

2. No other injuries seen on the body.

D The photo of the deceased did not show any injury except for the one that was consistent with paraquat ingestion such as mouth ulcer. Furthermore Deponent 14 (Mahaletchumy Kaveri) who helped the deceased with her bath did not notice any injury to her body. This ruled out any form of physical E force on the deceased. Additionally, according to the expert, the other conclusion one could make was that she had taken the paraquat voluntarily as there was no splash on her face.

This was because, if someone had forced her to drink the F paraquat, the body would react naturally to resist. When there was resistance, there was a possibility that the corrosive substance would have splashed on her face. There was also no mark around her neck to suggest someone had held her and forced her to drink. I am in complete agreement with the G expert on this.

3. There were testimonies from relatives of the deceased and doctors that she had confessed to them that she consumed it unknowingly.

H I find no reason to disbelieve their sworn evidence as these evidences were corroborated with the other circumstantial evidence. As I said earlier, all of the deponents' testimonies were consistent.

I

4. Paraquat was consumed from the bottle itself.

In my view, she could not have taken it unknowingly as the bottle was sealed. The seal must be broken first. This indicates that she knew that it was paraquat. Secondly, the paraquat has a strong smell. It would be impossible for her to confuse it with cough mixer after she had opened the bottle. As to why she had consumed it, I will deal with this in the next question.

Whether Any Person Is Criminally Concerned In The Cause Of The Death?

[27] The only evidence to suggest that someone was criminally liable was from Mr Manikavasagam (D22). His belief was that someone had murdered her. When I asked him for proof to that effect, he could not offer any at all. He in fact produced evidence as follows:

i. *Funeral Of The Deceased Recorded On VCD*

When I viewed the VCD featuring the funeral of the deceased, I found that there was nothing in the VCD to suggest how the deceased died, neither was there evidence to implicate anybody. From what I could see, that VCD showed the presence of Vell Paari. His presence was understandable as the deceased was his personal assistant. Deponent 22's view in respect of Vell Paari's reaction is totally irrelevant and purely a personal observation. He also said in his testimony that he will release another VCD after this inquest. When I asked him, how relevant was that VCD to this inquest, he answered that the VCD is not relevant. Again if the VCD was relevant, I am sure this witness would tender it before me.

ii. Call From Unknown Person

Mr Manikavasagam alleged that the father of the deceased had telephoned him and asked him to take up the matter. This was in direct contradiction of the evidence by the father before me. At this point I am of the view that I believe the evidence of the father as he is the last person to speak the untruth in respect of his own daughter's death.

[28] As Mr Manikavasagam could not identify the mysterious caller who, according to him, had asked him to help the family of the deceased to find the truth in Sujatha's death, I am of the view that such evidence must be disregarded as it offered no proof. The credibility of that evidence was highly questionable.

iii. Poison Letters

[29] Mr Manikavasagam had introduced a poison letter to show that someone was involved in the deceased's death. However, there was no evidence to support that claim and I must be careful not to allow evidence that was not credible to become a basis of my findings. This is important because I must decide on the evidence and the evidence must be credible. I hold that the poison letter is not credible evidence.

Surrounding Evidence

[30] I also had the opportunity to read her diary. It appears to me that the deceased had a happy life. In her diary, her writings proved that she was in love. However, I could not identify the man that she was in love with. But I have the evidence of the photo of Vell Paari next to her bed. And the evidence during the proceedings also showed the close relationship between Vell Paari and the deceased. He could be the person the deceased was in love with but I am reluctant to decide on this issue as it had no bearing in this inquest.

[31] I say this because; it matters not who was the love of her life as she had committed suicide for the reasons best known to her. Her lover may be morally wrong but not legally. Secondly, I am not here to pass my judgment on anybody's morality. This is not a court of morals and I will not allow that to cloud my findings in this inquest.

[32] After hearing all the relevant evidence, I ruled that there was no one involved in the death of the deceased. In my considered view, she had committed suicide. For me to speculate and make an assumption of her action without any credible evidence would not only be a breach of my duty but would also be an insult to her memory. Suffice for me to say here that the reason for her suicidal act was cremated together with her.

[33] It is interesting to note that in Australia and in United Kingdom, a coroner may, if he thinks it is necessary to prevent future fatalities, give his recommendations. While I have my reservations as to the practice and procedure of the medical treatment in this case, I shall not give my comments as it would run foul of s. 339 of the Criminal Procedure Code. In my view and experience in conducting inquest proceedings, I sincerely believe that, this is the time for Malaysia to have a specific legislation in respect to the procedure and power of the Coroner in an inquest proceeding.

Conclusion

[34] To conclude my findings, I hold that the deceased died on 25 June 2007 at 10.25am at Ward 7A, Tengku Ampuan Rahimah Hospital, Klang. Her cause of death is paraquat ingestion and she died in the manner which showed that she had committed suicide. I further ruled out the involvement of anybody in her death.

[35] On a personal note, I would like to thank not only the learned senior Deputy Public Prosecutors Anslem Charles and Geetham Ram, but also all the watching brief counsel who gave full co-operation, in particular Dato' Kumaraendran for assuring the smooth running of this inquest. This inquest is hereby closed.